

(2008) 01 SC CK 0085

In the Supreme Court Of India

Case No : Civil Appeal No. 550 of 2008 (Arising out of S.L.P. (C) No. 24307 of 2005)

United India Insurance Co. Ltd.

APPELLANT

Vs

Ram Prakash Raturi

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Citation : (2008) 3 ALT 9 : (2008) 1 CLT 734 : (2008) 1 GLH 653 : (2008) 1 JT 650 : (2008) 1 SCALE 567 : (2008) 3 SCC 355 : (2008) 1 UC 256

Hon'ble Judges : P. Sathasivam, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : P.R. Sikka and Chander Shekhar Ashri, for the Appellant; B.D. Sharma and Deep Shikha Bharti, for the Respondent

Final Decision : Dismissed

Judgement

Arijit Pasayat, J.—Leave granted.

Challenge in this appeal is to the order passed by the National Consumer Disputes Redressal Commission, New Delhi (in short 'National Commission') in Revision Petition No. 330 of 2005. By the impugned order, the revision petition was dismissed.

2. Background facts in a nutshell are as follows:

Respondent lodged a claim with the appellant claiming compensation for damages caused to the vehicle No. UP 07/A-0234. It was stated that the same was an Ambassador Taxi. The claim was repudiated by the appellant primarily on the ground that the policy of insurance was issued in the name of Smt. Roopa Sharma C/o Abdul Gaffar, 31/1, Muslim Colony, Dehradun, therefore, such claim was not entertained. Dispute was raised before the District Consumer Redressal Forum (for short 'District Forum'). Claim was made for Rs. 42,000/-. In the claim petition it was stated that the vehicle in question was purchased from Smt. Roopa Sharma and due registration was made by RTO, Dehradun and the

appellant was duly informed about the transfer. The premium was received and insurance coverage was granted for the period from 16.9.1999 to 15.9.2000. It was stated that relevant documents were produced before the appellant and notwithstanding the knowledge about the transfer of the ownership, the claim was rejected. The appellant filed objections to the claim petition and took the stand that the policy was in respect of own damage. The vehicle which was the subject matter of insurance stood in the name of Smt. Roopa Sharma. Therefore, in the absence of transfer of ownership or any information in that regard, the insurance company was not required to liquidate the claim.

District Forum was of the view that the insurance company was liable to pay Rs. 29,535/- towards the damages of complainant's vehicle. He was also entitled to interest @10% after 27.7.2000 i.e. the date of rejection of the claim and from 1.8.2000 till the payment to the complainant. Rs. 5,000/- as compensation and Rs. 1,000/- as litigation expenses were also awarded as payable. An appeal was preferred before the State Commission Consumer Protection, Uttaranchal (in short 'State Commission'). The appeal was partly allowed and the award of compensation was deleted. But it was held that since the vehicle was the subject matter of insurance, it was immaterial as to whether there was any transfer of ownership. A revision petition was filed before the National Commission, which as noted above, dismissed the revision petition.

3. Learned Counsel for the appellant submitted that the National Commission failed to take notice of several aspects. Firstly, in the notice issued by Mr. Rakesh Gupta, Advocate on behalf of Shri Abdul Gaffar, an affidavit was filed where the respondent No. 1 had clearly stated that he had no objection if the payment of amount for the accident claim of the vehicle is given to Smt. Roopa Sharma. This notice was issued on 17.11.2000. On 12.7.2001 another notice was issued on behalf of Ram Prakash Raturi, the respondent herein wherein it was stated that the said Ram Prakash Raturi was the registered owner of the vehicle which had been purchased by him from Smt. Roopa Sharma and the necessary changes to the effect in the records of RTO, Dehradun were made and endorsement to this effect was also made in the registration certificate of the aforesaid vehicle on 17.2.1995. It was stated that after verification of several documents cover note was issued which covered the period from 16.9.1999 to 15.9.2000. If, as indicated in the notice, the transfer was effected on 17.2.1995, the question of issuing the cover note/policy in the name of Smt. Roopa Sharma in the year 1999 did not arise. It was also pointed out that in the Motor claim form filed by respondent No. 1, he claimed to be the insured. All these clearly indicated that the respondent had not established that he had any insurable claim.

4. Learned Counsel for the respondent submitted that it is vehicle which is the subject matter of insurance and not any person and, therefore, the District Forum, State Commission and the National Commission were justified in their views.

5. It is to be noted that there is no dispute that it is the vehicle which is the

subject matter of insurance as was held by this Court in G. Govindan Vs. New India Assurance Co. Ltd. and Others, . In that case the decision was rendered in the background of a third party claim. Obviously, that question would not have much relevance on a claim relating to own damages. Further the factual scenario is not very clear. There appears to be two persons who made claim. One was Abdul Gaffar and the other was the respondent. Interestingly, in the notice issued on behalf of Abdul Gaffar, the respondent had given an affidavit stating that he had no objection if the amount was to be paid to Smt. Roopa Sharma. National Commission did not consider these aspects and on the contrary came to conclusions which are contrary to the stands taken. The following are the observations of the National Commission which clearly show that relevant aspects were not considered by the Commission:

We heard the Ld. Counsel for the petitioner at some length and also perused the material on record. The basic facts are not disputed, i.e. about the ownership of the car, the name of the insured, accident and the vehicle being covered by the insurance policy. There is no disputing the fact that the vehicle had been transferred in the name of complainant. We agree with the findings of both the lower fora that what was covered under insurance was the vehicle and not the person. It is the vehicle which had met with the accident and it stood transferred/registered in the name of the complainant. There is no denying the fact that when the vehicle was getting insured, the RC was seen by the Insurance company/Petitioner. It was at that stage, that any discrepancy now being taken advantage of by the petitioner could have been pointed out. It was not done. In such a situation, the complainant cannot be remediless.

(Underlined for emphasis)

6. It was noted as if there was no dispute that when the vehicle was insured the registration certificate had been seen by the insurance company. It was noted that there was no dispute that the vehicle had been transferred in the name of the complainant. In fact, there was categorical dispute about this fact. It is, therefore, clear that the National Commission has disposed of the revision petition without considering the relevant factors.

7. In the circumstances, we set aside the order of the National Commission and remit the matter to it for a fresh consideration in accordance with law.

The appeal is allowed to the aforesaid extent. No costs.